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In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 132

WILLIAM L. BALES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 71) is reported at 188 F. 2d 472.

JURISDICTION

The judgment of the Court of Appeals was entered on April 25, 1951 (R. 72) and a petition for

a rehearing was denied on May 30, 1951 (R. 72-74). The petition for a writ of certiorari was filed on June 21, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F.R. Crim. P.

QUESTIONS PRESENTED

1. Whether the court erred in failing affirmatively to instruct the jury on its own motion that they should acquit if they had reasonable doubt as to petitioner's guilt, where the court's charge covered the presumption of innocence and the requirement that the Government prove guilt beyond a reasonable doubt.

2. Whether the court erred in excluding hearsay evidence on its own motion and telling the jury to disregard it.

3. Whether there was evidence that petitioner unlawfully and knowingly transported in foreign commerce a stolen automobile from San Angelo, Texas, in the Northern District of Texas, to Mexico, so that prosecution in a court of that district was proper under Rule 18 of the Federal Rules of Criminal Procedure.

STATUTE AND RULES INVOLVED

18 U.S.C. 2312 provides:

> Transportation of stolen vehicles
>
> Whoever transports in interstate or foreign commerce a motor vehicle or aircraft, knowing the same to have been stolen, shall be fined

not more than $5,000 or imprisoned not more than five years, or both.

Rule 18, F. R. Crim. P., provides:

> Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed, but if the district consists of two or more divisions the trial shall be had in a division in which the offense was committed.

Rule 30, F. R. Crim. P., provides:

> At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury.

STATEMENT

The indictment (R. 1) charged that petitioner "did unlawfully, wilfully, and knowingly trans-

port in foreign commerce a stolen motor vehicle, to wit, a 1948 model Cadillac * * * from San Angelo, Tom Green County, Texas, within the San Angelo Division of the Northern District of Texas, and within the jurisdiction of this Court, to and into the Republic of Mexico, a foreign country, to wit, to Piedras Negras, * * * in the said Republic, * * * and at the time the said [petitioner] so transported the said motor vehicle in foreign commerce, he then and there well knew the said motor vehicle to have been stolen" in violation of 18 U.S.C. 2312, *supra,* pp. 2-3. The evidence adduced at the trial may be summarized as follows:

On March 20, 1949, a 1948 four-door Cadillac automobile, owned by a Mrs. Gus Allen, was stolen from the front of her parents' home in San Angelo, Texas (R. 14-15). On September 17, 1949, it was discovered in the possession of one Cardenas in Laredo, Texas (R. 16, 19, 27). Cardenas had purchased the car from one Silva in Mexico (Gov. Ex. 1, R. 21; R. 16-18, 22). Since petitioner had sold the car to Silva (R. 23, 24), a friend of Cardenas telephoned petitioner at San Angelo requesting him to come to Laredo to straighten out the difficulty about the title to the car (R. 34, 37-38).

After his arrival at Laredo, petitioner was questioned, without threats or coercion of any kind, by F.B.I. agent Taylor in three different conversations lasting about a half an hour on each occasion (R. 28, 32-33). (1) In the first interview on

September 18, 1949, petitioner stated that, while at a gambling establishment in Houston in January 1949, he paid $3,000 for a 1948 Cadillac to one A. G. Harris, who had lost a lot of money shooting dice, and Harris agreed to send a bill of sale or title to the car to San Angelo. After petitioner returned to San Angelo in the Cadillac he immediately took it into Mexico on a business trip. At Mexico City, where he went after leaving Piedras Negras, the car was damaged in a collision with a streetcar. He then sold the damaged car to Silva for $1,800. (R. 23.) (2) In the second interview, which also took place on September 18, petitioner stated that on March 20, 1949, after he had left his home in San Angelo in his Nash car to go to Mexico on a business trip, he decided to steal one of the cars parked in a circular driveway in San Angelo. After taking his Nash home, he walked to the parked "1948 Cadillac sedan which he drove to Mexico, crossing at Piedras Negras." After having a collision in Mexico City with a streetcar which damaged the Cadillac, he sold it to Silva for $1,800. (R. 24.)[1] (3) In the third interview, which occurred on the following day (September 19), petitioner's story was that he did not steal the car in San Angelo, but that he received it in Eagle Pass, Texas, after he paid money to the man who had

[1] The first two conversations which petitioner had with F.B.I. agent Taylor were in the presence of one Pena, a police sergeant at Laredo, who substantially corroborated the testimony of Taylor (R. 32).

stolen it, and that he then took the car into Mexico. Petitioner stated that he had used his own Nash car in driving from San Angelo to Eagle Pass, a fact which could be verified by gasoline credit cards he used at Del Rio and Eagle Pass in obtaining service on the Nash. (R. 25-26, 65.)

According to F.B.I. agent Taylor, petitioner admitted that he had prepared in his home the bill of sale for the Cadillac (Gov. Ex. 1, R. 21) by using the notary seal of a deceased notary public, and that he had mailed the document to Silva in Mexico City (R. 24-25). Petitioner also admitted in his own testimony that he had executed this paper (R. 47). In addition, the testimony of both agent Taylor and petitioner showed that petitioner admitted signing the original of Government Exhibit No. 2 (R. 62-65), which was a certified copy of a six-month Mexican tourist permit for a Cadillac automobile, issued to petitioner and dated March 20, 1949 (R. 25, 26, 48).

Contrary to evidence presented by the Government, petitioner took the stand on his own behalf and denied that he had told Sergeant Pena or F.B.I. agent Taylor that he had stolen the Cadillac car (R. 46, 47). His story was that he had purchased it from Sam Harris at Piedras Negras, Mexico, on March 20, 1949, where he paid $1,500 cash on a total purchase price of $3,000 and received a receipt (Def. Ex. 1, R. 42) for this payment signed by Harris (R. 43-44, 49). He related

that he drove his Nash car to Mexico on the day he bought the Cadillac, and had gasoline receipts for the service of his Nash car on that date at Del Rio and Eagle Pass (R. 44-45, 65).

On behalf of petitioner, one De Anda, the former Chief of Police of Juarez, testified through an interpreter that a man named Sam Harris was shown to him in 1948 by one of the members of a band of known car thieves. He was then asked by petitioner's counsel (R. 54):

> Q. * * * Did you have occasion to examine this exhibit [apparently Def. Ex. 1, the receipt signed by Sam Harris, R. 42]?
>
> A. It is the first time I see it.
>
> Q. Have you examined some of the signatures of Sam Harris?
>
> A. Sam Harris has used a lot of aliases, this is one of the names he has seen.

Then after some testimony explaining the regulations about permission for cars to come into Mexico (R. 54-55), he was asked (R. 55-56):

> Q. Do you know whether or not Sam Harris wrote this [apparently referring to Def. Ex. 1, R. 42]?
>
> A. He doesn't know that.
>
> Mr. Binion (Asst. U.S. Attorney): That is all. Wait just a minute.
>
> The Court: You never talked to Sam Harris at all?
>
> A. No, sir.

The Court: Somebody else told you that somebody was named Sam Harris?

A. One of the members of the gang.

The Court: I say, somebody told him?

A. Yes, pointed to him.

The Court: Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it.

The jury having found petitioner guilty, the court sentenced him to a $500 fine and two years' imprisonment (R. 68, 69-70). On appeal, the Court of Appeals affirmed the judgment of the lower court and overruled a petition for a rehearing (R. 72-74).

ARGUMENT

1. Petitioner's contention that it was reversible error for the trial court to fail, of its own motion, affirmatively to instruct the jury that it was their duty to acquit him if they had reasonable doubt as to his guilt upon a consideration of all the evidence (Pet. 8) is without merit since the trial court did charge on the presumption of innocence and the necessity of proving guilt beyond a reasonable doubt (R. 66). At the trial petitioner made no request that the court give the instruction he now asserts was required, nor did he object to the giving of the court's charge without including it.

Rule 30, F. R. Crim P., *supra,* p. 3, provides that the parties may file written requests for instructions, and states that "no party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury re-

tires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection." However, Rule 52(b), F. R. Crim. P., directs that "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." In *Nordgren* v. *United States,* 181 F. 2d 718, 722-723 (C.A. 9), the court stated:

> The federal appellate courts, mindful of the requirements of Rule 30 of the Criminal Rules, 18 U.S.C.A., seldom reverse for failure to give instructions in the absence of a seasonable request, and will do so only if the omission appears to have been so seriously prejudicial as to lead the court to believe that the accused was not given a fair trial.

See also *Kempe* v. *United States,* 160 F. 2d 406, 411 (C.A. 8), certiorari denied, 331 U.S. 843; *Cave* v. *United States,* 159 F. 2d 464, 469 (C.A. 8), certiorari denied, 331 U.S. 847. Normally this Court will not take note of an error where no exception is taken to the trial court's charge, *Johnson* v. *United States,* 318 U.S. 189, 200; but it has done so only where the error was fundamental, e.g., where there was a failure to submit to the jury the essential elements of the only offense on which a conviction could rest. *Screws* v. *United States,* 325 U.S. 91, 107. See also *United States* v. *Atkinson,* 297 U. S. 157, 160.

In the instant case, the omission from the court's

charge of an affirmative instruction to direct an acquittal did not seriously prejudice petitioner so that he did not get a fair trial, thereby affecting the "fairness, integrity or public reputation of judicial proceedings." *United States* v. *Atkinson, supra.* Rather, he was not prejudiced at all. The charge covered the presumption of innocence and defined reasonable doubt correctly.[2] In stating that petitioner "is presumed to be innocent of the charge made against him until the government shall have proven his guilt by legal, and, competent evidence beyond a reasonable doubt" (R. 66), it clearly implied that the jury should acquit him if they had a reasonable doubt as to his guilt upon a consideration of all the evidence,[3] that being all that petitioner contends was erroneously omitted from the instructions and should have been supplied by the court on its own motion. Even the failure of a court to mention in its instructions the presumption as to an accused's innocence has been held not reversible error, where the omission was not called to the

---

[2] Although petitioner urges that the instruction defining reasonable doubt (R. 66) was error (Pet. 10-11), it was in harmony with the following instruction approved in *Hopt* v. *Utah*, 120 U.S. 430, 439: "* * * if, after * * * consideration of all the evidence, you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own affairs, you have no reasonable doubt."

[3] See also the following part of the court's charge (R. 67):

"If you find Not Guilty you simply write your verdict, 'We, the Jury, find the defendant Not Guilty,' and sign by your foreman whom you shall have previously chosen."

court's attention and no exception was taken. *Spevak* v. *United States,* 158 F. 2d 594, 598 (C.A. 4), certiorari denied, 330 U.S. 821; *United States* v. *McGuire,* 64 F. 2d 485, 493, certiorari denied, 290 U.S. 645; *Dinger* v. *United States,* 28 F. 2d 548, 550 (C.A. 8). The same is true with respect to failure to define reasonable doubt. *Sawyear* v. *United States,* 27 F. 2d 569, 571 (C.A. 9), certiorari denied, 278 U.S. 650; *Raffour* v. *United States,* 284 Fed. 720 (C.A. 9). It is submitted that these are much more substantial omissions than that asserted by petitioner.

2. There is no substance in petitioner's contention that the court erred in excluding of its own motion [4] certain testimony of his witness De Anda (Pet. 14). See, *supra,* pp. 7-8. Apparently petitioner wanted to show that De Anda knew Sam Harris and that he could identify Harris' signature on Def. Ex. 1, R. 42, in corroboration of petitioner's defense that he had paid $1,500 cash to Harris at Piedras Negras, Mexico, as part payment on the Cadillac. However, De Anda testified that he did not know Harris personally but only through a band of car thieves, one of whom pointed Harris out to him (R. 54, 55); and he was unable to identify Harris' signature on Def. Ex. 1 (R. 55). After

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[4] A court may exclude inadmissible evidence on its own motion though no objection is made thereto. Cf. *State* v. *Jackson,* 346 Mo. 474, 483, 142 S. W. 2d 45, 50; *People* v. *Jenkins,* 353 Ill. 152, 158, 187 N. E. 148, 150-151; *Jarvis* v. *State,* 138 Ala. 17, 37, 34 So. 1025, 1032. See also *Ng Sing* v. *United States,* 8 F. 2d 919, 920-921 (C.A. 9).

the court ascertained that De Anda had never talked to Harris, but someone had merely said there was a Sam Harris and pointed him out to De Anda, the court ruled (R. 56):

> Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it.

Since it appears that De Anda's knowledge of the existence of a Sam Harris was derived solely from hearsay received from a member of a band of car thieves who had pointed Harris out to him,[5] the court's action in excluding such evidence was clearly proper.[6]

3. Finally, petitioner contends that there was no evidence to show that the offense charged was committed in the Northern District of Texas, so that the prosecution was not in accordance with Rule 18, F. R. Crim. P., *supra,* p. 3 (Pet. 16-20). This argument erroneously ignores the second of the three conversations petitioner had with F.B.I. agent Taylor (see *supra,* p. 5).

---

[5] De Anda did not and could not, from his own observation and knowledge testify about Sam Harris. Cf. *Zimberg* v. *United States,* 142 F. 2d 132, 135 (C.A. 5), certiorari denied, 323 U.S. 712: "Ordinarily in the interest of accuracy a lay witness' testimony should be confined to statements of concrete facts within his own observation, knowledge and recollection, that is, to facts perceived by the use of his own senses as distinguished from his opinions, inferences, impressions or conclusions drawn from such facts."

[6] See R. 57, where the court of its own motion also excluded as hearsay, testimony by the witness Rohoff that he knew Harris through one of the members of the gang of car thieves.

In this second interview Taylor, corroborated by Pena, stated that petitioner narrated the following story (R. 24, 32):

> * * * that on the morning of March 20, 1949, he had left his home here in San Angelo in his Nash car to go to Mexico on a business trip. That in passing the M. D. Bryant home he saw a number of cars parked in a circular driveway. That he decided to steal one of these cars, drove his Nash back home, walked over to the Bryant home, and took the 1948 Cadillac sedan which he drove to Mexico, crossing at Piedras Negras.

There was ample evidence of the fact that petitioner had unlawfully transported in foreign commerce the stolen Cadillac from San Angelo, in the San Angelo Division, Northern District of Texas, to Piedras Negras, Mexico, so that there was proper venue in the trial court within Rule 18, F. R. Crim. P.

Granted that the first and third interviews petitioner had with Taylor were inconsistent with the second (see *supra,* pp. 4-6) and that the third interview considered together with his own testimony was the most helpful to petitioner, there was merely a conflict in the evidence. The credibility of the witnesses being for the jury, they resolved this conflict, as they could properly do, in favor of Taylor's version as to petitioner's second conversation confessing his guilt, and against petition-

er's explanation that he purchased and took possession of the car for the first time in Mexico, and not in San Angelo, Texas. It was immaterial that the Government did not present evidence directly to disprove petitioner's testimony about the gasoline credit receipts for his Nash car at Eagle Pass and Del Rio (R. 44-45, 65), since this was part of petitioner's explanation which the jury did not choose to believe.

CONCLUSION

The case involves no conflict or question of general importance. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1951.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1951 981830 86

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Office-Supreme Court, U. S.
FILED
OCT 2 1951
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 132

WILLIAM L. BALES,

Petitioner,

vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONER

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

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WILLIAM L. BALES,

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vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONER

Reply to the Second Question Presented by the Government's Brief

The Petitioner does not agree with the Government that the second question involved in this appeal is as quoted on page 2 of its brief as follows:

> "2. Whether the court erred in excluding hearsay evidence on its own motion and telling the jury to disregard it."

because such a statement assumes that the excluded evidence was in fact hearsay when in truth and in fact such evidence was not hearsay and was in all respects competent, relevant and admissible evidence that was vital to Petitioner's defense.

The Second Specification of Errors appearing on page 7 of Petitioner's Petition for a Writ of Error is as follows:

> "2. The Circuit Court of Appeals erred in holding that the Trial Court was not in error when it instructed the jury to disregard all of the testimony of the Petitioner's witness, Rosenda DeAnda, because such testimony was material and admissible upon the principal issue of the Petitioner's defense, that is, that the Petitioner purchased the vehicle in good faith and was not a thief thereof and therefore did not know that the same was a stolen vehicle."

The testimony in question is as follows:

> "Q. Will you state your name?
>
> By Interpreter:
>
> A. Rosenda DeAnda.
> Q. Where do you live Mr. DeAnda?
> A. Juarez.
> Q. In the Republic of Mexico?
> A. Yes.
> Q. And what is your business, please?
> A. He is a military man.
> Q. What kind of military?
> A. Lieutenant Colonel in the cavalry.
> Q. Do you know the defendant, Billy Bales?
> A. Yes, I do.
> Q. How long have you known him?
> A. 1944.
> Q. Do you know a man by the name of Sam Harris?
> A. Yes, I do.
> Q. When did you know him, Mr. DeAnda?
> A. In 1948, more or less.

Q. More or less, did you say?
A. Yes, in March, 1948.
Q. How did you happen to know him, Mr. DeAnda?
A. I knew him through a band of known car thieves while he was Chief of Police in Juarez.
Q. You were Chief of Police of Juarez at the time?
A. I was.
Q. You were Chief of Police?
A. I was.

* * * * * * *

Q. Did you have occasion to examine this exhibit?
A. It is the first time I see it.
Q. Have you examined some of the signatures of Sam Harris?
A. Sam Harris has used a lot of aliases, this is one of the names he has seen.
Q. This is one of the names he has seen. How many have you seen used?
A. Eight or ten names in his dealings" (R. 53-54).

After giving the foregoing testimony, the witness DeAnda was cross-examined by the district attorney regarding the practice of issuing permits for entry into Mexico, and after such cross-examination (R. 54-55), the Trial Court asked the witness the following questions:

"The Court: You never talked to Sam Harris at all?
A. No, Sir.
The Court: Somebody else told you that somebody was named Sam Harris?
A. One of the members of his gang.
The Court: I say, somebody told him?
A. Yes, pointed to him" (R. 55).

The Court then made the following statement:

"Pay no attention to that testimony, gentlemen, that is hearsay, he doesn't know anything about it" (R. 56).

Such statement from the court had the effect of excluding from the jury that portion of such witness' testimony to the effect that he knew Sam Harris. It will be recalled that the witness was asked the direct question "Do you know a man by the name of Sam Harris?" and the witness answered, "Yes, I do." Such answer was in unequivocal terms. He further testified when and where he had known him. The ruling of the court had the effect of removing such direct testimony from the jury. This evidence was not hearsay.

This excluded testimony was vital to the defense of the petitioner, because he had testified that he had purchased the car in question from one Sam Harris. The theory of the Government was that no such man existed. The testimony of the Witness DeAnda showed that he not only existed, but that he knew him in 1948 and that he used various aliases. But the exclusion of all of this evidence by the ruling of the court prevented the jury from considering it and caused the jury to believe the theory of the Government and caused the conviction of the petitioner.

The Court of Appeals was in error in holding that the Trial Court was not in error in excluding such evidence, and such holding is in conflict with a prior decision in the same court in the case of *Post* v. *United States,* 135 F. 1, 70 L. R. A. 989. In that case, just as in the case at bar, the judge told the jury to entirely disregard certain evidence. The Court of Appeals held it to be error in the following language:

> "And, under the practice of the Federal Courts, the judge may express his opinion as to the weight or effect of evidence or the credibility of witnesses; but, if evidence is admitted as, and is, legal and relevant, the jury, we think, should not be peremptorily directed to ignore it. If it be of a kind that greatly taxes the credulity of the judge, he can say so, or, if he totally

disbelieves it, he may announce that fact, leaving the jury free to believe it or not. If the jury concur in the view expressed by the judge, they may entirely disregard such evidence in their verdict; but to direct the jury to ignore it is to tell them not to consider it at all, even to determine whether it deserves credence or not—if evidence is admissible at all, we can see no reason why it is not to be passed on to the jury."

This action on the part of the Trial Court deprived the Petitioner of a fair and impartial trial as guaranteed to him by the Fifth Amendment of the Constitution of the United States, and caused his conviction.

Petitioner renews his prayer that his petition be granted.

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CERTIORARI DENIED